***Miranda* Issues – Without *Miranda* warnings, confessions are inadmissible in the State's case-in-chief, but if the defendant's statement is voluntary, it may be used for impeachment if the defendant chooses to testify at trial……..Revised 12/2009**

Miranda rights arose out of the Fifth Amendment guarantee that "No person … shall be compelled in any criminal case to be a witness against himself." In *Miranda v. Arizona*, the Court described the Fifth Amendment guarantee as "a protective device to dispel the compelling atmosphere of the interrogation." *Miranda v. Arizona*, 384 U.S. 436, 465 (1966). Further, the *Miranda* Court reasoned that a defendant, held in custody for interrogation, has a right to have an attorney present. Without this right, the defendant's ability "to exercise the privilege – to remain silent if he chose or to speak without any intimidation, blatant or subtle" – would be undermined. *Id*. at 466.

> The *Miranda* warnings are meant to preserve the privilege against self-incrimination during incommunicado interrogation of individuals in a police-dominated atmosphere because such surroundings create inherently compelling pressures which work to undermine the individual's will to resist and to compel him to speak where he would not otherwise do so freely.

State v. Schinzel, 202 Ariz. 375, 380, ¶ 21, 45 P.3d 1224, 1229 (App. 2002) [internal citations and quotation marks omitted]. The United States Supreme Court has stated, "exclusion of a statement made in the absence of the warnings … serves to deter the taking of an incriminating statement without first informing the individual of his Fifth Amendment rights." *Brown v. Illinois*, 422 U.S. 590, 600-01 (1975).

Consequently, whenever a suspect is in a **custodial setting** and an agent of the government initiates an **interrogation**, the government's agent must first read the defendant the *Miranda* warnings and verify that he understands them. Accordingly, any *Miranda* inquiry must first address whether the defendant was in custody, and next

whether there was an interrogation. Only when both custody and interrogation are present does *Miranda* apply.

The "Custody" Prong of the *Miranda* Analysis

Statements made by a defendant in custody in response to governmental interrogation are inadmissible at trial unless the defendant has been advised of and waived his or her *Miranda* rights. *Miranda v. Arizona*, 384 U.S. 436 (1966).

In *Yarborough v. Alvarado*, 541 U.S. 652, 667 (2004), the United States Supreme Court held that whether a suspect is "in custody" for *Miranda* purposes is a purely objective "reasonable person" inquiry, and that in determining whether a person is in custody, courts may not consider the particular circumstances of a suspect, such as his age and experience, or lack of experience, with law enforcement.[1] *See also State v. Spreitz,* 190 Ariz. 129, 945 P.2d 1260 (1997); *State v. Stanley,* 167 Ariz. 519, 809 P.2d 944 (1991). The issue of whether a person is in "custody" for *Miranda* purposes is determined by an objective test using a reasonable person standard. "An objective test is used to determine whether the defendant was in custody, that is, 'whether under the totality of the circumstances a reasonable person would feel that he was in custody or otherwise deprived of his freedom of action in a significant way.'" *State v. Smith*, 197 Ariz. 333, 335, ¶ 4, 4 P.3d 388, 390 (App. 1999), *quoting State v. Carter*, 145 Ariz. 101, 105, 700 P.2d 488, 492 (1985). "Our decisions make clear that the initial determination

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[1]*But see In re Jorge D.*, 202 Ariz. 277, 280-281, ¶¶ 15-16, 43 P.3d 605, 608-09 (App. 2002), in which the Court held that in determining whether a juvenile suspect was in custody for *Miranda* purposes, courts apply an objective test, but also consider "additional elements that bear upon a child's perceptions and vulnerability, including the child's age, maturity and experience with law enforcement and the presence of a parent or other supportive adult." *Yarborough v. Alvarado* casts the holding of *Jorge D.* in doubt insofar as *Jorge D.* is based on interpretation of federal law.

of custody depends on the objective circumstances of the interrogation, not on the subjective views harbored by either the interrogating officers or the person being questioned." *Stansbury v. California*, 511 U.S. 318, 323 (1994).

A motorist subjected to a traffic stop based on a reasonably articulable suspicion of criminal activity is ordinarily not "in custody" for *Miranda* purposes. *Berkemer v. McCarty,* 468 U.S. 420, 436-41 (1984); *State v. Pettit*, 194 Ariz. 192, 195, ¶ 15, 979 P.2d 5, 8 (App. 1998). Explicit declarations of arrest by a police officer meet the custodial requirement. Implied acts by the police officer, such as handcuffing, also meet the custodial requirement because a reasonable person placed in handcuffs by an officer would feel deprived of his freedoms. "Factors indicative of custody include: (1) whether the objective indicia of arrest are present, (2) the site of the interrogation, (3) the length and form of the investigation, and (4) whether the investigation had focused on the accused." *State v. Pettit*, 194 Ariz. 192, 195, ¶ 13, 979 P.2d 5, 8 (App. 1998), *quoting State v. Stanley,* 167 Ariz. 519, 523, 809 P.2d 944, 948 (1991); *also see State v. Wright*, 161 Ariz. 394, 397, 778 P.2d 1290, 1293 (App. 1989).

The "Interrogation" Prong of the *Miranda* Analysis

"'Interrogation,' as conceptualized in the *Miranda* opinion, must reflect a measure of compulsion above and beyond that inherent in custody itself." *Rhode Island v. Innis*, 446 U.S. 291, 300 (1980). For *Miranda* purposes, "[t]he term 'interrogation' … not only refers to express questioning, but also to any words or actions on the part of the police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response from the suspect." *Id.* In *Illinois v. Perkins*, 496 U.S. 292, 297 (1990), an imprisoned defendant made damaging

admissions to an undercover agent posing as a fellow prisoner. The defendant argued that his statements should be suppressed because the undercover agent failed to read him his *Miranda* rights. The Supreme Court disagreed, stating:

> We reject the argument that *Miranda* warnings are required whenever a suspect is in custody in a technical sense and converses with someone who happens to be a government agent. Questioning by captors, who appear to control the suspect's fate, may create mutually reinforcing pressures that the Court has assumed will weaken the suspect's will, but where a suspect does not know that he is conversing with a government agent, these pressures do not exist.

Because *Miranda* addresses the coercive effect of custodial interrogation, statements not made in response to interrogation are not subject to the *Miranda* rule. "Statements volunteered by defendant and not prompted by the interrogation are admissible." *State v. Beaty*, 158 Ariz. 232, 241, 762 P.2d 519, 528 (1988). Volunteered statements are not barred by *Miranda* because they are not the result of any attempt by the government to elicit incriminating remarks. *State v. Kemp*, 185 Ariz. 52, 58, 912 P.2d 1281, 1287 (1996), *quoting Kuhlmann v. Wilson,* 477 U.S. 436, 459 (1986) [holding that "the defendant must demonstrate that the police and their informant took some action, beyond merely listening, that was designed deliberately to elicit incriminating remarks"].

Burden on State to Show that *Miranda* was Satisfied

Once it is determined that *Miranda* applies, the State bears the burden of showing that *Miranda* was satisfied. "To satisfy *Miranda*, the State must show that appellant understood his rights and intelligently and knowingly relinquished those rights before custodial interrogation began." *State v. Tapia*, 159 Ariz. 284, 286-287, 767 P.2d 5, 7-8 (1988); *State v. Rivera,* 152 Ariz. 507, 513, 733 P.2d 1090, 1096 (1987).

A Suspect may Invoke Fifth Amendment Right to Counsel Before he Receives *Miranda* Warnings

Once a suspect is in custody, he may invoke his Fifth Amendment right to counsel at any point, even before the police administer the *Miranda* warning. To do this, the suspect must verbally state his wish for the presence and assistance of counsel during custodial interrogation. However, a suspect may not **waive** his *Miranda* rights until after the police warn him of those rights. Consequently, a valid waiver of those rights must be knowing and voluntary, in complete understanding of what the waiver means. *Edwards v. Arizona*, 451 U.S. 477, 484 (1981).

Voluntariness and *Miranda* Distinguished

Voluntariness and *Miranda* are two separate inquiries. Even though a defendant's statement is voluntary, it will not be admissible in the State's case in chief unless the police complied with *Miranda*.

> "[T]he necessity of giving *Miranda* warnings to a suspect relates not to the voluntariness of a confession but to its admissibility." *State v. Morse,* 127 Ariz. 25, 29, 617 P.2d 1141, 1145 (1980). Unless law enforcement officers advise a defendant in custody of the *Miranda* rights before questioning him, any statement made by that person in custody is inadmissible against him at trial "even though the statement may in fact be wholly voluntary." *Michigan v. Moseley,* 423 U.S. 96, 100, 96 S.Ct. 321, 325, 46 L.Ed.2d 313, 319 (1975).

State v. Montes, 136 Ariz. 491, 494, 667 P.2d 191, 194 (1983). In *State v. Huerstel*, 206 Ariz. 93, 107, ¶ 61, 75 P.3d 698, 712 (2003), the officer failed to advise the defendant of his *Miranda* warnings, but the trial court found that the defendant's statement was nevertheless voluntary, citing *State v. Walker,* 138 Ariz. 491, 495, 675 P.2d 1310, 1314 (1984). Because *Miranda* was not satisfied, the defendant's statement could not be used in the State's case in chief. *Id.* However, the Arizona Supreme Court held that

even though the defendant's *Miranda* rights were violated, his voluntary statement would be admissible for impeachment if he chose to testify at trial. *Id.*

Involuntary statements, however, are not admissible for any purpose. In *State v. Pettit*, 194 Ariz. 192, 979 P.2d 5 (App. 1998), the police arrested the defendant and took him to the police station. There, the police failed to read the defendant his *Miranda* rights and promised him that nothing he said would be used against him. The defendant made damaging admissions. The Court of Appeals held that because the police failed to comply with *Miranda* before questioning the defendant while he was in custody at the station, the trial court properly suppressed the defendant's statements and barred the State from using them in the State's case in chief. Further, because the statements were the result of promises of leniency, they were involuntary, so the trial court correctly barred the State from using the defendant's statements for impeachment or any other purpose. *State v. Pettit*, 194 Ariz. 192, 195, ¶ 17, 979 P.2d 5, 9 (App. 1998). Similarly, in *State v. Gonzales*, 181 Ariz. 502, 512-513, 892 P.2d 838, 848-849 (1995), police arrested the defendant, wounding him in the process. While he was in the hospital having the wound cleaned, the police interrogated him without first advising him of his *Miranda* rights. The Arizona Supreme Court held that the statements were taken in violation of *Miranda* and therefore could not be used in the State's case in chief. However, his statements were not coerced, so they were admissible for impeachment.